

**Animal and Plant Health Inspection Service, USDA****§ 319.40-1***Eagle Pass*

U.S. Border Station, 160 Garrison Street,  
P.O. Box P, Eagle Pass, TX 78852.

*El Paso*

Cordova Border Station, room 172-A, 3600  
East Paisano, El Paso, TX 79905.

*Galveston*

Room 402, U.S. Post Office Building, 601  
Rosenberg Street, P.O. Box 266, Galveston,  
TX 77553.

*Hidalgo*

U.S. Border Station, Bridge Street, P.O.  
Drawer R, Hidalgo, TX 78557.

*\*Houston*

(Airport) Houston Plant Inspection Station,  
3016 McKaughan, Houston, TX 77032.  
U.S. Appraisers Stores Building, room 210  
7300 Wingate Street, Houston, TX 77011.

*Laredo*

La Posada Motel, rooms L8-13, 1000 Zaragoza  
Street, P.O. Box 277, Laredo, TX 78040.  
Juarez-Lincoln International Bridge, 101  
Santa Ursela, Laredo, TX 78040.  
U.S. International Bridge No. 1, 100 Convent  
Avenue, Laredo, TX 78040.

*Port Arthur*

Federal Building, room 201, Fifth Street &  
Austin Avenue, P.O. Box 1227, Port Arthur,  
TX 77640.

*Presidio*

U.S. Border Station, International Bridge,  
P.O. Box 1001, Presidio, TX 79845.

*Progreso*

Custom House Building, Progreso Inter-  
national Bridge, Progreso, TX 78579.

*Roma*

International Bridge, P.O. Box 185, Roma,  
TX 78584.

*San Antonio*

International Satellite, room 15-S, 9700 Air-  
port Boulevard, San Antonio, TX 78216.

VIRGIN ISLANDS OF THE UNITED STATES

*St. Thomas*

Room 227, Federal Building, P.O. Box 8119,  
St. Thomas, Virgin Islands of the U.S.  
00801.

*(Airport)*

Harry S. Truman Airport, Main Terminal  
Building, St. Thomas, Virgin Islands of the  
U.S. 00801.

*St. Croix*

Drawer 1548, Kingshill, St. Croix, Virgin Is-  
lands of the U.S. 00850.

VIRGINIA

*Chantilly (Airport)*

Dulles International Airport, International  
Arrivals Area, P.O. Box 17134, Washington,  
DC 20041.

*Newport News*

P.O. Box 942, Newport News, VA 23607.

*Norfolk*

Federal Building, room 311, 200 Granby Mall,  
Norfolk, VA 23510.

WASHINGTON

*Blaine*

Custom House, room 216, P.O. Drawer C,  
Blaine, WA 98230.

*McChord AFB*

MAC Terminal, P.O. Box 4116, McChord Air  
Force Base, Tacoma, WA 98438.

*\*Seattle*

Federal Office Building, room 9014, 909 First  
Avenue, Seattle, WA 98174.

*(Airport)*

Seattle-Tacoma International Airport, Se-  
attle, WA 98158.

WISCONSIN

*Milwaukee*

International Arrivals Terminal, General  
Mitchell Field, 5300 South Howell Avenue,  
Milwaukee, WI 53207.

[45 FR 31585, May 13, 1980, as amended at 54  
FR 34133, Aug. 18, 1989; 57 FR 47978, Oct. 21,  
1992; 59 FR 21622, Apr. 26, 1994; 61 FR 51210,  
Oct. 1, 1996; 68 FR 50048, Aug. 20, 2003; 68 FR  
70423, Dec. 18, 2003; 69 FR 5673, Feb. 5, 2004]

**Subpart—Logs, Lumber, and Other  
Unmanufactured Wood Articles**

SOURCE: 60 FR 27674, May 25, 1995, unless  
otherwise noted.

**§ 319.40-1 Definitions.**

*Administrator.* The Administrator of  
the Animal and Plant Health Inspec-  
tion Service, United States Depart-  
ment of Agriculture, or any employee  
of the United States Department of Ag-  
riculture delegated to act in his or her  
stead.

*APHIS.* The Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Bark chips.* Bark fragments broken or shredded from log or branch surfaces.

*Certificate.* A certificate of inspection relating to a regulated article, which is issued by an official authorized by the national government of the country in which the regulated article was produced or grown, which contains a description of the regulated article, which certifies that the regulated article has been inspected, is believed to be free of plant pests, and is believed to be eligible for importation pursuant to the laws and regulations of the United States, and which may contain any specific additional declarations required under this subpart.

*Compliance agreement.* A written agreement between APHIS and a person engaged in processing, handling, or moving regulated articles, in which the person agrees to comply with requirements contained in the agreement.

*Departmental permit.* A document issued by the Administrator authorizing the importation of a regulated article for experimental, scientific, or educational purposes.

*Fines.* Small particles or fragments of wood, slightly larger than sawdust, that result from chipping, sawing, or processing wood.

*Free from rot.* No more than two percent by weight of the regulated articles in a lot show visual evidence of fructification of fungi or growth of other microorganisms that cause decay and the breakdown of cell walls in the regulated articles.

*General permit.* A written authorization contained in § 319.40-3 for any person to import the articles named by the general permit, in accordance with the requirements specified by the general permit, without being issued a specific permit.

*Humus, compost, and litter.* Partially or wholly decayed plant matter.

*Import (imported, importation).* To bring or move into the territorial limits of the United States.

*Importer document.* A written declaration signed by the importer of regulated articles, which must accompany the regulated articles at the time of importation, in which the importer ac-

curately declares information about the regulated articles required to be disclosed by § 319.40-2(b).

*Inspector.* Any individual authorized by the Administrator to enforce this subpart.

*Log.* The bole of a tree; trimmed timber that has not been sawn further than to form cants.

*Loose wood packing material.* Excelsior (wood wool), sawdust, and wood shavings, produced as a result of sawing or shaving wood into small, slender, and curved pieces.

*Lot.* All the regulated articles on a single means of conveyance that are derived from the same species of tree and were subjected to the same treatments prior to importation, and that are consigned to the same person.

*Lumber.* Logs that have been sawn into boards, planks, or structural members such as beams.

*Permit.* A specific permit to import a regulated article issued in accordance with § 319.40-4, or a general permit promulgated in § 319.40-3.

*Plant pest.* Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts of parasitic plants, noxious weeds, viruses, or any organism similar to or allied with any of the foregoing, or any infectious substances, which can injure or cause disease or damage in any plants, parts of plants, or any products of plants.

*Port of first arrival.* The area (such as a seaport, airport, or land border station) where a person or a means of conveyance first arrives in the United States, and where inspection of regulated articles is carried out by inspectors.

*Primary processing.* Any of the following processes: cleaning (removal of soil, limbs, and foliage), debarking, rough sawing (bucking or squaring), rough shaping, spraying with fungicide or insecticide sprays, and fumigation.

*Regulated article.* The following articles, if they are unprocessed or have received only primary processing: logs; lumber; any whole tree; any cut tree or any portion of a tree, not solely consisting of leaves, flowers, fruits, buds, or seeds; bark; cork; laths; hog fuel; sawdust; painted raw wood products;

excelsior (wood wool); wood chips; wood mulch; wood shavings; pickets; stakes; shingles; solid wood packing materials; humus; compost; and litter.

*Regulated wood packaging material.* Wood packaging material other than manufactured wood materials, loose wood packing materials, and wood pieces less than 6 mm thick in any dimension, that are used or for use with cargo to prevent damage, including, but not limited to, dunnage, crating, pallets, packing blocks, drums, cases, and skids.

*Sealed container; sealable container.* A completely enclosed container designed for the storage or transportation of cargo, and constructed of metal or fiberglass, or other rigid material, providing an enclosure which prevents the entrance or exit of plant pests and is accessed through doors that can be closed and secured with a lock or seal. Sealed (sealable) containers are distinct and separable from the means of conveyance carrying them.

*Specific permit.* A written document issued by APHIS to the applicant in accordance with §319.40-4 that authorizes importation of articles in accordance with this subpart and specifies or refers to the regulations applicable to the particular importation.

*Treatment Manual.* The Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at §300.1 of this chapter in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

*Statement of origin and movement.* A signed, accurate statement certifying the area or areas where the regulated articles originated and, if applicable, the area or areas they were moved through prior to importation. The statement may be printed directly on the documentation accompanying the shipment of regulated articles, or it may be provided on a separate document. The statement does not require the signature of a public officer of a national plant protection organization; exporters may sign the document.

*Tropical hardwoods.* Hardwood timber species which grow only in tropical climates.

*United States.* All of the States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands

of the United States, and all other territories and possessions of the United States.

*Wood chips.* Wood fragments broken or shredded from any wood.

*Wood mulch.* Bark chips, wood chips, wood shavings, or sawdust intended for use as a protective or decorative ground cover.

*Wood packaging material.* Wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity (includes dunnage).

[60 FR 27674, May 25, 1995, as amended at 63 FR 50110, Sept. 18, 1998; 63 FR 69542, Dec. 17, 1998; 65 FR 21127, Apr. 20, 2000; 69 FR 55732, Sept. 16, 2004; 69 FR 61587, Oct. 20, 2004]

#### **§319.40-2 General prohibitions and restrictions; relation to other regulations.**

(a) *Permit required.* Except for regulated articles exempted from this requirement by paragraph (c) of this section or §319.40-3, no regulated article may be imported unless a specific permit has been issued for importation of the regulated article in accordance with §319.40-4, and unless the regulated article meets all other applicable requirements of this subpart and any requirements specified by APHIS in the specific permit.

(b) *Importer document; documentation of type, quantity, and origin of regulated articles.* Except for regulated articles exempted from this requirement by paragraph (c) of this section or §319.40-3, no regulated article may be imported unless it is accompanied by an importer document stating the following information. A certificate that contains this information may be used in lieu of an importer document at the option of the importer:

(1) The genus and species of the tree from which the regulated article was derived;

(2) The country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) The use for which the regulated article is imported; and

(5) Any treatments or handling of the regulated article required by this subpart that were performed prior to arrival at the port of first arrival.

(c) *Regulation of articles imported for propagation or human consumption.* The requirements of this subpart do not apply to regulated articles that are allowed importation in accordance with § 319.19, "Subpart—Citrus Canker and Other Citrus Diseases", or §§ 319.37 through 319.37-14, "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products"; or to regulated articles imported for human consumption that are allowed importation in accordance with §§ 319.56 through 319.56-8, "Subpart—Fruits and Vegetables."

(d) *Regulated articles imported for experimental, scientific or educational purposes.* Any regulated article may be imported without further restriction under this subpart if:

(1) Imported by the United States Department of Agriculture for experimental, scientific, or educational purposes;

(2) Imported pursuant to a Departmental permit issued by APHIS for the regulated article prior to its importation and kept on file at the port of first arrival; and

(3) Imported under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction into the United States of plant pests.

(e) *Designation of additional regulated articles.* An inspector may designate any article as a regulated article by giving written notice of the designation to the owner or person in possession or control of the article. APHIS will implement rulemaking to add articles designated as regulated articles to the definition of regulated article in § 319.40-1 if importation of the article appears to present a recurring significant risk of introducing plant pests. Inspectors may designate an article as a regulated article after determining that:

(1) The article was imported in the same container or hold as a regulated article;

(2) Other articles of the same type imported from the same country have been found to carry plant pests; or

(3) The article appears to be contaminated with regulated articles or soil.

(f) In addition to meeting the requirements of this subpart, logs and pulpwood with bark attached, as well as cut trees (e.g., Christmas trees), imported from Canada are subject to the inspection and certification requirements for gypsy moth in § 319.77-4 of this part.

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[60 FR 27674, May 25, 1995, as amended at 63 FR 13485, Mar. 20, 1998; 64 FR 45866, Aug. 23, 1999; 69 FR 52418, Aug. 26, 2004; 69 FR 61587, Oct. 20, 2004]

**§ 319.40-3 General permits; articles that may be imported without a specific permit; articles that may be imported without either a specific permit or an importer document.**

(a) *Canada and Mexico.* (1) The following articles may be imported into the United States under general permit:

(i) From Canada: Regulated articles, other than regulated articles of the subfamilies Aurantioideae, Rutoideae, and Toddalioideae of the botanical family Rutaceae and regulated articles of pine (*Pinus spp.*) that are not completely free of bark from Provinces in Canada that are considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the Canadian Food Inspection Agency.

(ii) From States in Mexico adjacent to the United States: Commercial and noncommercial shipments of mesquite wood for cooking; commercial and noncommercial shipments of unmanufactured wood for firewood; and small, noncommercial packages of unmanufactured wood for personal cooking or personal medicinal purposes.

(2) Commercial shipments allowed in paragraph (a)(1) of this section are subject to the inspection and other requirements in § 319.40-9 and must be accompanied by an importer document stating that they are derived from trees harvested in Canada or States in Mexico adjacent to the United States border.

(3) Noncommercial shipments allowed in paragraph (a)(1) of this section

are subject to inspection and other requirements of § 319.40-9 and must be accompanied by an importer document or oral declaration stating that they are derived from trees harvested in Canada or States in Mexico adjacent to the United States border.

(b) *Regulated wood packaging material.* Regulated wood packaging material, whether in actual use as packing for regulated or nonregulated articles or imported as cargo, may be imported into the United States under a general permit in accordance with the following conditions:

(1) *Treatment.* The wood packaging material must have been:

(i) Heat treated to achieve a minimum wood core temperature of 56 °C

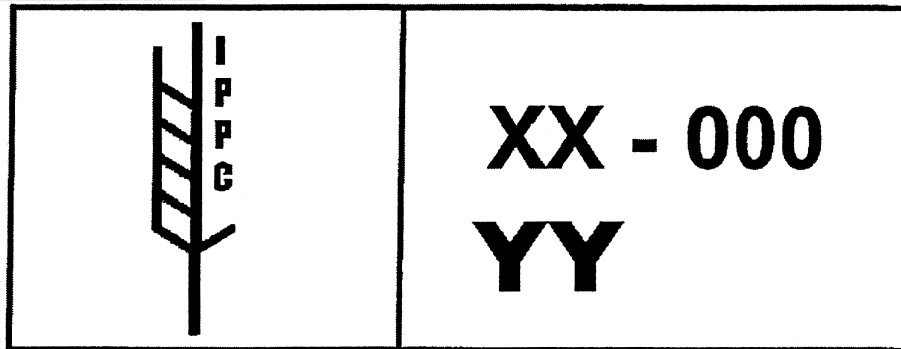
for a minimum of 30 minutes. Such treatment may employ kiln-drying, chemical pressure impregnation, or other treatments that achieve this specification through the use of steam, hot water, or dry heat; or,

(ii) Fumigated with methyl bromide in an enclosed area for at least 16 hours at the following dosage, stated in terms of grams of methyl bromide per cubic meter or pounds per 1,000 cubic feet of the enclosure being fumigated. Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with label instructions approved by the U.S. Environmental Protection Agency:

| Temperature ( °C/ °F) | Initial dose<br>g/m <sup>3</sup> and lbs./<br>1,000 c.f.) | Minimum required concentration<br>g/m <sup>3</sup> and lbs./1,000 c.f.) after: |         |         |          |
|-----------------------|---|--|---------|---------|----------|
|                       |   | 0.5 hrs  | 2 hrs.  | 4 hrs.  | 16 hrs.  |
| 21/70 or above .....  | 48/3.0  | 36/2.25  | 24/1.5  | 17/1.06 | 14/0.875 |
| 16/61 or above .....  | 56/3.5  | 42/2.63  | 28/1.75 | 20/1.25 | 17/1.06  |
| 11/52 or above .....  | 64/4.0  | 48/3.0   | 32/2.0  | 22/1.38 | 19/1.19  |

(2) *Marking.* The wood packaging material must be marked in a visible location on each article, preferably on at least two opposite sides of the article, with a legible and permanent mark that indicates that the article meets the requirements of this paragraph. The mark must be approved by the International Plant Protection Convention in its International Standards for Phytosanitary Measures to certify that wood packaging material has been subjected to an approved measure, and must include a unique graphic symbol,

the ISO two-letter country code for the country that produced the wood packaging material, a unique number assigned by the national plant protection agency of that country to the producer of the wood packaging material, and an abbreviation disclosing the type of treatment (e.g., HT for heat treatment or MB for methyl bromide fumigation). The currently approved format for the mark is as follows, where XX would be replaced by the country code, 000 by the producer number, and YY by the treatment type (HT or MB):



(3) *Immediate reexport of regulated wood packaging material without required mark.* An inspector at the port of first arrival may order the immediate reexport of regulated wood packaging material that is imported without the mark required by paragraph (b)(2) of this section, in addition to or in lieu of any port of first arrival procedures required by § 319.40-9 of this part.

(4) *Exception for Department of Defense.* Regulated wood packaging material used by the Department of Defense (DOD) of the U.S. Government to package nonregulated articles, including commercial shipments pursuant to a DOD contract, may be imported into the United States without the mark required by paragraph (b)(2) of this section.

(c) *Loose wood packing materials.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Loose wood packing materials (whether in use as packing or imported as cargo) that are dry may be imported subject to the inspection and other requirements in § 319.40-9 and without further restriction under this subpart.

(d) *Bamboo timber.* APHIS hereby issues a general permit to import regulated articles authorized by this paragraph. Bamboo timber which is free of leaves and seeds and has been sawn or split lengthwise and dried may be imported subject to the inspection and other requirements in § 319.40-9 and without further restriction under this subpart.

(e) *Regulated articles the permit process has determined to present no plant pest risk.* Regulated articles for which a specific permit has been issued in accordance with § 319.40-4(b)(2)(i) may be imported without other restriction under this subpart, except that they are subject to the inspection and other requirements in § 319.40-9.

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[60 FR 27674, May 25, 1995, as amended at 63 FR 50110, Sept. 18, 1998; 63 FR 69542, Dec. 17, 1998; 69 FR 52418, Aug. 26, 2004; 69 FR 55732, Sept. 16, 2004; 69 FR 61587, Oct. 20, 2004]

**§ 319.40-4 Application for a permit to import regulated articles; issuance and withdrawal of permits.**

(a) *Application procedure.* A written application for a permit<sup>1</sup> must be submitted to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations Permit Unit, 4700 River Road Unit 136, Riverdale, MD 20737-1236. The completed application must include the following information:

(1) The specific type of regulated article to be imported, including the genus and species name of the tree

<sup>1</sup>Application forms for permits are available without charge from the Administrator, c/o the Permit Unit, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, 4700 River Road, Riverdale, MD 20737, or local offices of Plant Protection and Quarantine, which are listed in telephone directories.

from which the regulated article was derived;

(2) Country, and locality if known, where the tree from which the regulated article was derived was harvested;

(3) The quantity of the regulated article to be imported;

(4) A description of any processing, treatment or handling of the regulated article to be performed prior to importation, including the location where any processing or treatment was or will be performed and the names and dosage of any chemicals employed in treatments;

(5) A description of any processing, treatment, or handling of the regulated article intended to be performed following importation, including the location where any processing or treatment will be performed and the names and dosage of any chemicals employed in treatments;

(6) Whether the regulated article will or will not be imported in a sealed container or in a hold;

(7) The means of conveyance to be used to import the regulated article;

(8) The intended port of first arrival in the United States of the regulated article, and any subsequent ports in the United States at which regulated articles may be unloaded;

(9) The destination and general intended use of the regulated article;

(10) The name and address of the applicant and, if the applicant's address is not within the United States, the name and address of an agent in the United States whom the applicant names for acceptance of service of process; and

(11) A statement certifying the applicant as the importer of record.

(b) *Review of application and issuance of permit.* After receipt and review of the application, APHIS shall determine whether it appears that the regulated article at the time of importation will meet either the specific importation requirements in § 319.40-5 or the universal importation requirements in § 319.40-6.

(1) If it appears that the regulated article proposed for importation will meet the requirements of either § 319.40-5 or § 319.40-6, a permit stating the applicable conditions for importation

under this subpart shall be issued for the importation of the regulated article identified in the application.

(2) If it appears that the regulated article proposed for importation will not meet the requirements of either § 319.40-5 or § 319.40-6 because these sections do not address the particular regulated article identified in the application, APHIS shall review the application by applying the plant pest risk assessment standards specified in § 319.40-11.

(i) If this review reveals that importation of the regulated article under a permit and subject to the inspection and other requirements in § 319.40-9, but without any further conditions, will not result in the introduction of plant pests into the United States, a permit for importation of the regulated article shall be issued. The permit may only be issued in unique and unforeseen circumstances when the importation of the regulated article is not expected to recur.

(ii) If this review reveals that the regulated article may be imported under conditions that would reduce the plant pest risk to an insignificant level, APHIS may implement rule-making to add the additional conditions to this subpart, and after the regulations are effective, may issue a permit for importation of the regulated article.

(3) No permit will be issued to an applicant who has had a permit withdrawn under paragraph (d) of this section during the 12 months prior to receipt of the permit application by APHIS, unless the withdrawn permit has been reinstated upon appeal.

(c) *Permit does not guarantee eligibility for import.* Even if a permit has been issued for the importation of a regulated article, the regulated article may be imported only if all applicable requirements of this subpart are met and only if an inspector at the port of first arrival determines that no remedial measures are necessary pursuant to the Plant Protection Act with respect to the regulated article.<sup>2</sup>

<sup>2</sup> An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with

*Continued*

(d) *Denial and withdrawal of permits.* Any permit which has been issued may be withdrawn by an inspector or the Administrator if he or she determines that the person to whom the permit was issued has violated any requirement of this subpart. If the withdrawal is oral, the decision to withdraw the permit and the reasons for the withdrawal of the permit shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been denied or withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully denied or withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal as promptly as circumstances permit. If there is a conflict as to any material fact and the person from whom the permit is withdrawn requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing shall be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0049)

[60 FR 27674, May 25, 1995, as amended at 66 FR 21056, Apr. 27, 2001; 69 FR 52418, Aug. 26, 2004]

**§ 319.40-5 Importation and entry requirements for specified articles.**

(a) *Bamboo timber.* Bamboo timber consisting of whole culms or canes may be imported into Guam or the Northern Mariana Islands subject to inspection and other requirements of § 319.40-9. Bamboo timber consisting of whole culms or canes that are completely dry as evidenced by lack of moisture in node tissue may be imported into any part of the United States subject to inspection and other requirements of § 319.40-9.

(b) *Monterey pine logs and lumber from Chile and New Zealand; Douglas-fir logs and lumber from New Zealand—(1) Logs—*  
(i) *Requirements prior to importation.* Monterey or Radiata pine (*Pinus*

*radiata*) logs from Chile or New Zealand and Douglas-fir (*Pseudotsuga menziesii*) logs from New Zealand that are accompanied by a certificate stating that the logs meet the requirements of paragraph (b)(1)(i) (A) through (D) of this section, and that are consigned to a facility in the United States that operates in accordance with § 319.40-8, may be imported in accordance with paragraphs (b)(1)(i)(A) through (b)(1)(iii) of this section.

(A) The logs must be from live healthy trees which are apparently free of plant pests, plant pest damage, and decay organisms.

(B) The logs must be debarked in accordance with § 319.40-7(b) prior to fumigation.

(C) The logs and any regulated wood packaging material to be used with the logs during shipment to the United States must be fumigated in accordance with § 319.40-7(f)(1), within 45 days following the date the trees are felled and prior to arrival of the logs in the United States, in the holds or in sealable containers. Fumigation must be conducted in the same sealable container or hold in which the logs and regulated wood packaging material are exported to the United States.

(D) During shipment to the United States, no other regulated article is permitted on the means of conveyance with the logs, unless the logs and the other regulated articles are in separate holds or separate sealed containers, or, if the logs and other regulated articles are mixed in a hold or sealed container, the other regulated articles either have been heat treated with moisture reduction in accordance with § 319.40-7(d), or have been fumigated in the hold or sealable container in accordance with paragraph (b)(1)(i)(C) of this section.

(ii) *Requirements upon arrival in the United States.* The following requirements apply upon arrival of the logs in the United States.

(A) The logs must be kept segregated from other regulated articles from the time of discharge from the means of conveyance until the logs are completely processed at a facility in the United States that operates under a compliance agreement in accordance with § 319.40-8.

sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).



(B) The logs must be moved from the port of first arrival to the facility that operates under a compliance agreement in accordance with § 319.40-8 by as direct a route as reasonably possible.

(iii) *Requirements at the processing facility.* The logs must be consigned to a facility operating under a compliance agreement in accordance with § 319.40-8 that includes the following requirements:

(A) Logs or any products generated from logs, including lumber, must be heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(B) The logs, including sawdust, wood chips, or other products generated from the logs in the United States, must be processed in accordance with paragraph (b)(1)(iii) of this section within 60 days from the time the logs are released from the port of first arrival.

(C) Sawdust, wood chips, and waste generated by sawing or processing the logs must be disposed of by burning, heat treatment in accordance with § 319.40-7(c), heat treatment with moisture reduction in accordance with § 319.40-7(d), or other processing that will destroy any plant pests associated with the sawdust, wood chips, and waste. Composting and use of the sawdust, wood chips, and waste as mulch are prohibited unless composting and use as mulch are preceded by fumigation in accordance with § 319.40-7(f)(3), heat treatment in accordance with § 319.40-7(c), or heat treatment with moisture reduction in accordance with § 319.40-7(d). Wood chips, sawdust, and waste may be moved in enclosed trucks for processing at another facility operating under a compliance agreement in accordance with § 319.40-8.

(2) *Raw lumber.* Raw lumber, including regulated wood packaging material imported as cargo, from Chile or New Zealand derived from Monterey or Radiata pine (*Pinus radiata*) logs and raw lumber from New Zealand derived from Douglas-fir (*Pseudotsuga menziesii*) logs may be imported in accordance with paragraphs (b)(2) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than regulated wood packaging

material) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers; *Except for* mixed shipments of logs and raw lumber fumigated in accordance with § 319.40-7(f)(2) and moved in accordance with paragraph (b)(1)(i)(D) of this section. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a compliance agreement in accordance with § 319.40-8 that requires the raw lumber to be heat treated in accordance with § 319.40-7(c) or heat treated with moisture reduction in accordance with § 319.40-7(d) before any cutting, planing, or sawing of the raw lumber, and within 30 days from the time the lumber is released from the port of first arrival.

(c) *Tropical hardwoods—(1) Debarked.* Tropical hardwood logs and lumber that have been debarked in accordance with § 319.40-7(b) may be imported subject to the inspection and other requirements of § 319.40-9.

(2) *Not debarked.* Tropical hardwood logs that have not been debarked may be imported if fumigated in accordance with § 319.40-7(f)(1) prior to arrival in the United States.

(3) *Not debarked; small lots.* Tropical hardwood logs that have not been debarked may be imported into the United States, other than into Hawaii, Puerto Rico, or the Virgin Islands of the United States, if imported in a lot of 15 or fewer logs and subject to the inspection and other requirements of § 319.40-9.

(d) *Temperate hardwoods.* Temperate hardwood logs and lumber (with or without bark) from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported if fumigated in accordance with § 319.40-7(f) prior to arrival in the United States and subject to the inspection and other requirements of § 319.40-9.

(e) *Regulated articles associated with exclusively tropical climate pests.* Regulated articles that have been identified by a plant pest risk assessment as associated solely with plant pests that can successfully become established only in

tropical or subtropical climates may be imported if:

(1) The regulated article is imported only to a destination in the continental United States; and,

(2) the regulated article is not imported into any tropical or subtropical areas of the United States specified in the permit.

(f) Cross-ties (railroad ties) from all places, except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer, may be imported if completely free of bark and accompanied by an importer document stating that the cross-ties will be pressure treated with a preservative within 30 days following the date of importation at a U.S. facility under compliance agreement. Cross-ties (railroad ties) may also be imported if heat treated in accordance with § 319.40-7(c).

(g)-(k) [Reserved]

(l) *Cross-ties (railroad ties) and pine and fir lumber from Mexican States adjacent to the United States/Mexico border.*<sup>3</sup> Cross-ties (railroad ties) 8 inches or less at maximum thickness and lumber derived from pine and fir may be imported from Mexican States adjacent to the United States/Mexico border into the United States if they:

(1) Originate from Mexican States adjacent to the United States/Mexico border;

(2) Are 100 percent free of bark; and

(3) Are fumigated prior to arrival in the United States. The regulated article and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T312 contained in the Treatment Manual. In lieu of the schedule T312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

(m) *Regulated articles of pine (Pinus spp.) that are not completely free of bark from Canada.*

<sup>3</sup>Cross-ties (railroad ties) may also be imported in accordance with paragraph (f) of this section, or may be imported if heat treated in accordance with § 319.40-7(c).

(1) *Cut pine Christmas trees.* Cut pine Christmas trees from Canada may be imported into the United States only if they meet the following requirements, as well as all other applicable requirements of this subpart:

(i) *From noninfested Canadian Provinces to all areas of the United States.* Cut pine Christmas trees that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the Canadian Food Inspection Agency (CFIA), may be imported into any area of the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved only through areas of Canada not considered to be infested with pine shoot beetle, as determined by the CFIA;

(B) The U.S. destination (including county and State) is plainly indicated on the cut pine Christmas trees or on the outer covering or container; and

(C) If the cut pine Christmas trees are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the cut pine Christmas trees are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(ii) *From infested or partially infested Canadian Provinces to U.S. infested areas.* Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle (*Tomicus piniperda*), as determined by the CFIA, and are destined for and will be moved only through areas in the United States

that are quarantined for pine shoot beetle, as provided in §301.50-3 of this chapter, may be imported into the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Canadian Province where the cut pine Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the cut pine Christmas trees originated in and were moved through one or more Canadian Provinces considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA; and

(B) The U.S. destination (including county and State) is plainly indicated on the cut pine Christmas trees or on the outer covering or container.

(iii) *From infested or partially infested Canadian Provinces to or through U.S. noninfested areas.* Cut pine Christmas trees that originated in or were moved through a Canadian Province that is considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA, and are destined for or will be moved through an area in the United States that is not quarantined for pine shoot beetle, as provided in §301.50-3 of this chapter, may be imported into the United States only if:

(A) They are accompanied by a certificate that specifies the Canadian Province where the Christmas trees originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and indicates in the treatment section of the certificate that the Christmas trees have been treated with methyl bromide to kill the pine shoot beetle; or, alternatively, in lieu of methyl bromide treatment, the certificate contains one of the following additional declarations:

(1) "These regulated articles were grown on a plantation that has a program to control or eradicate pine shoot beetle (*Tomicus piniperda*) and have been inspected and are considered to be free from pine shoot beetle (*Tomicus piniperda*)"; or

(2) "These regulated articles originated in an area where pine shoot beetle (*Tomicus piniperda*) is not considered

to be present, as determined by the CFIA"; or

(3) "These regulated articles have been 100 percent inspected and found to be free from pine shoot beetle (*Tomicus piniperda*)"; and

(B) The U.S. destination (including county and State) is plainly indicated on the Christmas trees or on the outer covering or container; and

(C) If the Christmas trees are to be moved through an area of the United States that is quarantined for pine shoot beetle, as provided in §301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the Christmas trees are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(2) *Other pine articles.* Regulated articles from Canada (other than cut pine Christmas trees) that consist of pine bark, including, but not limited to, chips, nuggets, mulch, and compost, as well as pine products with pine bark attached, including, but not limited to, logs, lumber, pulpwood, stumps, and raw pine materials for wreaths and garlands, may be imported into the United States only if they meet one of the following requirements, as well as all other applicable requirements of this subpart:

(i) *From Canadian noninfested Provinces to all areas of the United States.* Regulated articles that originated in and were moved only through Canadian Provinces that are not considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA, may be imported into any area of the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the Province where the regulated articles originated and, if applicable, the Province or Provinces they were moved through, if different from the Province of origin, and also states that the regulated articles originated in and were only moved through Provinces of Canada not considered to be infested or partially infested with pine

shoot beetle, as determined by the CFIA;

(B) The U.S. destination (including county and State) is plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container; and

(C) If the regulated articles are to be moved through an area of the United States that is quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the regulated articles are shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(ii) *From Canadian infested Provinces or partially infested Provinces to U.S. infested areas.* Regulated articles that originated in or were moved through a Canadian infested or partially infested Province, as determined by the CFIA, and are destined for and will be moved only through areas in the United States that are quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may be imported into the United States only if:

(A) They are accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the articles originated, and if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin, and also states that the regulated articles originated in and were moved through one or more Provinces of Canada considered to be infested or partially infested with pine shoot beetle, as determined by the CFIA; and

(B) The U.S. destination (including county and State) is plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(iii) *From noninfested areas in partially infested Canadian Provinces to or through U.S. noninfested areas.* Regulated articles that originated in a non-

infested area county or municipal regional county of a partially infested Canadian Province, as determined by the CFIA, and were moved through Canadian noninfested areas only, and are destined for or will be moved through any area in the United States that is not quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may only be imported into the United States if one of the following sets of conditions is met:

(A) The regulated articles are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The certificate also must contain the following additional declaration: "These regulated articles originated in and were moved only through areas where pine shoot beetle (*Tomicus piniperda*) is not present, as determined by the CFIA." In addition, the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container. If the regulated articles are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, the regulated articles must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle; or

(B) The regulated articles are consigned to a designated U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40-8 for specified handling or processing of the articles. The name and address of the U.S. facility (including county and State) receiving the regulated articles must be plainly indicated on the articles or, if applicable, on the outer covering, packaging, or container. If the regulated articles are

to be moved through an area of the United States quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is 10 °C (50 °F) or higher, then the regulated articles also must be shipped in an enclosed vehicle or completely covered (such as with plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

(iv) *From Canadian infested Provinces or infested areas of partially infested Provinces to or through U.S. noninfested areas.* (A) Regulated articles that originated in or were moved through either a Canadian Province considered to be infested with pine shoot beetle or an infested area within a partially infested Canadian Province, as determined by the CFIA, and that are destined for or will be moved through any area in the United States not quarantined for pine shoot beetle, as provided in § 301.50-3 of this chapter, may only be imported into the United States if one of the following sets of conditions provided is met:

(1) The regulated articles are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated with methyl bromide to kill the pine shoot beetle in accordance with 7 CFR 319.40-7(f). In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(2) The regulated articles consist of pine bark and are accompanied by a certificate that specifies both the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved

through, if different from the county or municipal regional county and Province of origin. The additional declaration section must state, "The pine bark in this shipment has been ground into pieces less than or equal to 1 inch in diameter." In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(3) The regulated articles are shipped from a CFIA-approved facility that processes only regulated articles that originated in areas in Canada or the United States not considered to be infested with pine shoot beetle. The facility must be inspected by the CFIA at least twice a year to verify its compliance with CFIA handling and processing procedures, and the CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the articles, as well as the U.S. destination (including county and State) must be plainly indicated on the regulated articles or, if applicable, on the outer covering, packaging, or container.

(4) The pine products are accompanied by a certificate that specifies the county or municipal regional county and Province where the regulated articles originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. The treatment section of the certificate must indicate that the regulated articles have been treated in accordance with § 319.40-6. In addition, the U.S. destination (including county and State) of the regulated articles must be plainly indicated on the regulated articles or, if applicable, on the outer covering, package, or container.

(5) The regulated articles, consisting of logs with bark attached, are consigned to a U.S. facility that operates under a compliance agreement with APHIS in accordance with § 319.40-8 for specified handling or processing of the regulated articles. The logs must be

## § 319.40-6

## 7 CFR Ch. III (1-1-05 Edition)

transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. facility. The logs must be accompanied by a statement of origin and movement that specifies the county or municipal regional county and Province where the logs originated and, if applicable, the counties or municipal regional counties and Provinces they were moved through, if different from the county or municipal regional county and Province of origin. In addition, the name and address (including county and State) of the U.S. facility receiving the logs must be plainly indicated on the regulated articles or, if applicable, on the outer covering or container.

(6) The regulated articles, consisting of pine bark, are shipped from a CFIA-approved facility for use as a fuel at a cogeneration facility in the United States approved by APHIS. The pine bark must be transported by as direct a route as reasonably possible and not off-loaded en route to the U.S. cogeneration facility. The Canadian facility from which the pine bark is shipped must be inspected by the CFIA at least twice a year to verify that the facility is following handling and processing procedures that adequately safeguard the pine bark for shipment to the U.S. cogeneration facility. CFIA must provide APHIS with a current list of approved facilities at least annually. The name and address (including the county or municipal regional county and Province) of the CFIA-approved facility that shipped the pine bark, as well as the name and address of the U.S. cogeneration facility receiving the shipment (including county and State) must be plainly indicated on the outer covering, packaging, or container of the pine bark.

(B) If the regulated articles in paragraphs (i)(2)(iv)(1) through (5) of this section are to be moved through an area of the United States quarantined for pine shoot beetle, as provided in §301.50-3 of this chapter, en route to an area or areas in the United States not quarantined for pine shoot beetle during the period of January through September when the temperature is higher than 10 °C (50 °F), the regulated articles must be shipped in an enclosed vehicle or completely covered (such as with

plastic canvas, or other closely woven cloth) so as to prevent access by pine shoot beetle.

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### § 319.40-6 Universal importation options.

(a) *Logs.* Logs may be imported if prior to importation the logs have been debarked in accordance with §319.40-7(b) and heat treated in accordance with §319.40-7(c). During the entire interval between treatment and export, the logs must be stored and handled in a manner which excludes any access to the logs by plant pests.

(b) *Lumber—(1) Heat treated or heat treated with moisture reduction.* Lumber that prior to importation has been heat treated in accordance with §319.40-7(c), or heat treated with moisture reduction in accordance with §319.40-7(d), may be imported in accordance with paragraphs (b)(1) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the lumber, unless the lumber and the other regulated articles are in separate holds or separate sealed containers, or, if the lumber and other regulated articles are mixed in a hold or sealed container, all the regulated articles have been heat treated in accordance with §319.40-7(c), or heat treated with moisture reduction in accordance with §319.40-7(d). Lumber on the vessel's deck must be in a sealed container, unless it has been heat treated with moisture reduction in accordance with §319.40-7(d).

(ii) If lumber has been heat treated in accordance with §319.40-7(c), that fact must be stated on the importer document, or by a permanent marking on each piece of lumber in the form of the letters "HT" or the words "Heat Treated." If lumber has been heat treated with moisture reduction in accordance with §319.40-7(d), that fact must be stated on the importer document, or by

a permanent marking, on each piece of lumber or on the cover of bundles of lumber, in the form of the letters "KD" or the words "Kiln Dried."

(2) *Raw lumber.* Raw lumber, including solid wood packing materials imported as cargo, from all places except places in Asia that are east of 60° East Longitude and north of the Tropic of Cancer may be imported in accordance with paragraphs (b)(2) (i) and (ii) of this section.

(i) During shipment to the United States, no other regulated article (other than solid wood packing materials) is permitted on the means of conveyance with the raw lumber, unless the raw lumber and the other regulated articles are in separate holds or separate sealed containers. Raw lumber on the vessel's deck must be in a sealed container.

(ii) The raw lumber must be consigned to a facility operating under a compliance agreement in accordance with §319.40-8 that requires the raw lumber to be heat treated in accordance with §319.40-7(c) or heat treated with moisture reduction in accordance with §319.40-7(d), within 30 days from the time the lumber is released from the port of first arrival. Heat treatment must be completed before any cutting, planing, or sawing of the raw lumber.

(c) *Wood chips and bark chips*—(1) *From Chile (pine) and South America (eucalyptus).* Wood chips from Chile that are derived from Monterey or Radiata pine (*Pinus radiata*) logs and wood chips from South America that are derived from temperate species of *Eucalyptus* may be imported in accordance with paragraph (c)(2) of this section or in accordance with the following requirements:

(i) The wood chips must be accompanied by a certificate stating that the wood chips meet the requirements in paragraphs (c)(1)(i)(A) through (c)(1)(i)(C) of this section.

(A) The wood chips were treated with a surface pesticide treatment in accordance with §319.40-7(e) within 24 hours after the log was chipped and were retreated with a surface pesticide treatment in accordance with §319.40-7(e) if more than 30 days elapsed between the date of the first treatment

and the date of export to the United States.

(B) The wood chips were derived from logs from live, healthy, plantation-grown trees that were apparently free of plant pests, plant pest damage, and decay organisms, and the logs used to make the wood chips were debarked in accordance with §319.40-7(b) before being chipped.

(C) No more than 45 days elapsed from the time the trees used to make the wood chips were felled to the time the wood chips were exported.

(ii) During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted in the holds or sealed containers carrying the wood chips. Wood chips on the vessel's deck must be in a sealed container.

(iii) The wood chips must be consigned to a facility in the United States that operates under a compliance agreement in accordance with §319.40-8. The following requirements apply upon arrival of the wood chips in the United States:

(A) Upon arrival in the United States, the wood chips must be unloaded by a conveyor that is covered to prevent the chips from being blown by the wind and from accidental spillage. The facility receiving the wood chips must have a procedure in place to retrieve any chips that fall during unloading.

(B) If the wood chips must be transported after arrival, the chips must be covered or safeguarded in a manner that prevents the chips from spilling or falling off the means of conveyance or from being blown off the means of conveyance by wind.

(C) The wood chips must be stored at the facility on a paved surface and must be kept segregated from other regulated articles from the time of discharge from the means of conveyance until the chips are processed. The storage area must not be adjacent to wooded areas.

(D) The wood chips must be processed within 45 days of arrival at the facility. Any fines or unusable wood chips must be disposed of by burning within 45 days of arrival at the facility.

(2) *From locations other than certain places in Asia.* Wood chips and bark

## § 319.40-7

## 7 CFR Ch. III (1-1-05 Edition)

chips from any place except places in Asia that are east of 60° east longitude and north of the Tropic of Cancer may be imported in accordance with this paragraph.

(i) The wood chips or bark chips must be accompanied by an importer document stating that the wood chips or bark chips were either:

(A) Derived from live, healthy, tropical species of plantation-grown trees grown in tropical areas; or

(B) Fumigated with methyl bromide in accordance with § 319.40-7(f)(3), heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(ii) During shipment to the United States, no other regulated articles (other than solid wood packing materials) are permitted in the holds or sealed containers carrying the wood chips or bark chips. Wood chips or bark chips on the vessel's deck must be in a sealed container; *Except that:* If the wood chips or bark chips are derived from live, healthy, plantation-grown trees in tropical areas, they may be shipped on deck if no other regulated articles are present on the vessel and the wood chips or bark chips are completely covered by a tarpaulin during the entire journey directly to the United States.

(iii) The wood chips or bark chips must be free from rot at the time of importation, unless accompanied by an importer document stating that the entire lot was fumigated with methyl bromide in accordance with § 319.40-7(f)(3), heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(iv) Wood chips or bark chips imported in accordance with this paragraph must be consigned to a facility operating under a compliance agreement in accordance with § 319.40-8. The wood chips or bark chips must be burned, heat treated in accordance with § 319.40-7(c), heat treated with moisture reduction in accordance with § 319.40-7(d), or otherwise processed in a manner that will destroy any plant pests associated with the wood chips or bark chips within 30 days of arrival at the facility. If the wood chips or bark chips are to be used for mulching or

composting, they must first be fumigated in accordance with § 319.40-7(f)(3), heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(d) *Wood mulch, humus, compost, and litter.* Wood mulch, humus, compost, and litter may be imported if accompanied by an importer document stating that the wood mulch, humus, compost, or litter was fumigated in accordance with § 319.40-7(f)(3), heat treated in accordance with § 319.40-7(c), or heat treated with moisture reduction in accordance with § 319.40-7(d).

(e) *Cork and bark.* Cork and cork bark, cinnamon bark, and other bark to be used for food, manufacture of medicine, or chemical extraction may be imported if free from rot at the time of importation and subject to the inspection and other requirements of § 319.40-9.

(Approved by the Office of Management and Budget under control number 0579-0049)

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### § 319.40-7 Treatments and safeguards.

(a) *Certification of treatments or safeguards.* If APHIS determines that a document required for the importation of regulated articles is inaccurate, the regulated articles which are the subject of the certificate or other document shall be refused entry into the United States. In addition, APHIS may determine not to accept any further certificates for the importation of regulated articles in accordance with this subpart from a country in which an inaccurate certificate is issued, and APHIS may determine not to allow the importation of any or all regulated articles from any such country, until corrective action acceptable to APHIS establishes that certificates issued in that country will be accurate.

(b) *Debarking.* Except for raw lumber, no more than 2 percent of the surface of all regulated articles in a lot may retain bark, with no single regulated article retaining bark on more than 5 percent of its surface. For raw lumber, debarking must remove 100 percent of the bark.



(c) *Heat treatment.* Heat treatment must be performed only at a facility where APHIS or an inspector authorized by the Administrator and the national government of the country in which the facility is located has inspected the facility and determined that its operation complies with the standards of this paragraph. Heat treatment procedures may employ steam, hot water, kilns, exposure to microwave energy, or any other method (e.g., the hot water and steam techniques used in veneer production) that raises the temperature of the center of each treated regulated article to at least 71.1 °C and maintains the regulated article at that center temperature for at least 75 minutes. For regulated articles heat treated prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any infestation of the regulated article by plant pests.

(d) *Heat treatment with moisture reduction.* (1) Heat treatment with moisture reduction may employ:

(i) Kiln drying conducted in accordance with the schedules prescribed for the regulated article in the Dry Kiln Operator's Manual, Agriculture Handbook 188, which is incorporated by reference at § 300.2 of this chapter; or,

(ii) Dry heat, exposure to microwave energy, or any other method that raises the temperature of the center of each treated regulated article to at least 71.1 °C, maintains the regulated articles at that center temperature for at least 75 minutes, and reduces the moisture content of the regulated article to 20 percent or less as measured by an electrical conductivity meter.

(2) For regulated articles heat treated with moisture reduction prior to arrival in the United States, during the entire interval between treatment and export the regulated article must be stored, handled, or safeguarded in a manner which excludes any infestation of the regulated article by plant pests.

(e) *Surface pesticide treatments.* All United States Environmental Protection Agency registered surface pesticide treatments are authorized for regulated articles imported in accordance with this subpart, except that

*Pinus radiata* wood chips from Chile and wood chips from South America derived from temperate species of *Eucalyptus* must be treated in accordance with § 319.40-7(e)(2). Surface pesticide treatments must be conducted in accordance with label directions approved by the United States Environmental Protection Agency. Under the following circumstances, surface pesticide treatments must also be conducted as follows:

(1) *Heat treated logs.* When used on heat treated logs, a surface pesticide treatment must be first applied within 48 hours following heat treatment. The surface pesticide treatment must be repeated at least every 30 days during storage of the regulated article, with the final treatment occurring no more than 30 days prior to departure of the means of conveyance that carries the regulated articles to the United States.

(2) *Pinus radiata wood chips from Chile and Eucalyptus (temperate species) wood chips from South America.* When used on *Pinus radiata* wood chips from Chile or on wood chips from South America derived from temperate species of *Eucalyptus*, a surface pesticide consisting of the following must be used: A mixture of a fungicide containing 64.8 percent of the active ingredient didecyl dimethyl ammonium chloride and 7.6 percent of the active ingredient 3-iodo-2-propynyl butylcarbamate and an insecticide containing 44.9 percent of the active ingredient chlorpyrifos phosphorothioate. The wood chips must be sprayed with the pesticide so that all the chips are exposed to the chemical on all sides. During the entire interval between treatment and export, the wood chips must be stored, handled, or safeguarded in a manner that prevents any infestation of the wood chips by plant pests.

(f) *Methyl bromide fumigation.* The following minimum standards for methyl bromide fumigation treatment are authorized for the regulated articles listed in paragraphs (f)(1) through (f)(3) of this section. Any method of fumigation that meets or exceeds the specified temperature/time/concentration products is acceptable. Following fumigation, fumigated products must be aerated to reduce the concentration of fumigant below hazardous levels, in accordance with the Treatment Manual

and label instructions approved by the U.S. Environmental Protection Agency.

(1) *Logs*—(i) *T-312 schedule*. The entire log and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T-312 contained in the Treatment Manual. In lieu of the schedule T-312 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 240 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 17,280 gram-hours calculated on the initial methyl bromide concentration.

(ii) *T-404 schedule*. The entire log and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T-404 contained in the Treatment Manual. In lieu of the schedule T-404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(2) *Lumber*. The lumber and the ambient air must be at a temperature of 5 °C or above throughout fumigation. The fumigation must be conducted using schedule T-404 contained in the Treatment Manual. In lieu of the schedule T-404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(3) *Regulated articles other than logs or lumber*. (i) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 21 °C or above throughout fumigation, the fumigation must be conducted using schedule T-404 contained in the Treatment Manual. In lieu of the schedule T-404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration

of at least 48 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 760 gram-hours calculated on the initial methyl bromide concentration.

(ii) If the ambient air and the regulated articles other than logs or lumber are at a temperature of 4.5-20.5 °C throughout fumigation, the fumigation must be conducted using schedule T-404 contained in the Treatment Manual. In lieu of the schedule T-404 methyl bromide concentration, fumigation may be conducted with an initial methyl bromide concentration of at least 120 g/m<sup>3</sup> with exposure and concentration levels adequate to provide a concentration-time product of at least 1920 gram-hours calculated on the initial methyl bromide concentration.

(g) *Preservatives*. All preservative treatments that use a preservative product that is registered by the United States Environmental Protection Agency are authorized for treatment of regulated articles imported in accordance with this subpart. Preservative treatments must be performed in accordance with label directions approved by the United States Environmental Protection Agency.

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[60 FR 27674, May 25, 1999, as amended at 64 FR 59604, Nov. 3, 1999; 65 FR 21128, Apr. 20, 2000; 67 FR 8465, Feb. 25, 2002; 69 FR 2295, Jan. 15, 2004; 69 FR 52418, Aug. 26, 2004]

**§ 319.40-8 Processing at facilities operating under compliance agreements.**

(a) Any person who operates a facility in which imported regulated articles are processed may enter into a compliance agreement to facilitate the importation of regulated articles under this subpart. The compliance agreement shall specify the requirements necessary to prevent spread of plant pests from the facility, requirements to ensure the processing method effectively destroys plant pests, and the requirements for the application of chemical materials in accordance with the Treatment Manual. The compliance agreement shall also state that inspectors must be allowed access to the facility to monitor compliance

with the requirements of the compliance agreement and of this subpart. Compliance agreement forms may be obtained from the Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever the inspector finds that the person who entered into the compliance agreement has failed to comply with the conditions of the compliance agreement. If the cancellation is oral, the decision to cancel the compliance agreement and the reasons for cancellation of the compliance agreement shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for granting or denying the appeal, as promptly as circumstances permit. If there is a conflict as to any material fact and the person whose compliance agreement has been canceled requests a hearing, a hearing shall be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

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[60 FR 27674, May 25, 1995, as amended at 69 FR 52418, Aug. 26, 2004]

**§ 319.40-9 Inspection and other requirements at port of first arrival.**

(a) *Procedures for all regulated articles.*

(1) All imported regulated articles shall be inspected at the port of first arrival. If the inspector finds signs of plant pests on or in the regulated article, or finds that the regulated article may have been associated with other articles infested with plant pests, the regulated article shall be cleaned or treated as required by an inspector, and the regulated article and any products of the regulated article shall also be subject to reinspection, cleaning, and treatment at the option of an in-

spector at any time and place before all applicable requirements of this subpart have been accomplished.

(2) Regulated articles shall be assembled for inspection at the port of first arrival, or at any other place prescribed by an inspector, at a place and time and in a manner designated by an inspector.

(3) If an inspector finds that an imported regulated article is so infested with a plant pest that, in the judgment of the inspector, the regulated article cannot be cleaned or treated, or contains soil or other prohibited contaminants, the entire lot may be refused entry into the United States.

(4) No person shall move any imported regulated article from the port of first arrival unless and until an inspector notifies the person, in writing or through an electronic database, that the regulated article:

(i) Is in compliance with all applicable regulations and has been inspected and found to be apparently free of plant pests;<sup>4</sup> or,

(ii) Has been inspected and the inspector requires reinspection, cleaning, or treatment of the regulated article at a place other than the port of first arrival.

(b) *Notice of arrival; visual examination of regulated articles at port of first arrival.* (1) At least 7 days prior to the expected date of arrival in the United States of a shipment of regulated articles imported in accordance with this subpart, the permittee or his or her agent must notify the APHIS Officer in Charge at the port of arrival of the date of expected arrival. The address and telephone number of the APHIS Officer in Charge will be specified in any specific permit issued by APHIS<sup>5</sup>. This notice may be in writing or by telephone. The notice must include the

<sup>4</sup>Certain regulated articles may also be subject to §§ 319.56 through 319.56-8, "Subpart—Fruits and Vegetables," or to the noxious weed regulations under part 360 of this chapter, or to Endangered Species Act regulations under parts 355 and 356 of this chapter and 50 CFR parts 17 and 23.

<sup>5</sup>A list of APHIS Officers in Charge may be obtained from the Administrator, c/o Port Operations, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737.

## § 319.40-10

number of any specific permit issued for the regulated articles; the name, if any, of the means of conveyance carrying the regulated articles; the type and quantity of the regulated articles; the expected date of arrival; the country of origin of the regulated articles; the name and the number, if any, of the dock or area where the regulated articles are to be unloaded; and the name of the importer or broker at the port of arrival.

(2) Imported regulated articles which have been debarked in accordance with § 319.40-7(b) and can be safely and practically inspected will be visually examined for plant pests by an inspector at the port of first arrival. If plant pests are found on or in the regulated articles or if the regulated article cannot be safely and practically inspected, the regulated articles must be treated in accordance with the Treatment Manual.

(c) *Marking and identity of regulated articles.* Any regulated article, at the time of importation shall bear on the outer container (if in a container), on the regulated article (if not in a container), or on a document accompanying the regulated article the following information:

(1) General nature and quantity of the regulated articles;

(2) Country and locality, if known, where the tree from which the regulated article was derived was harvested;

(3) Name and address of the person importing the regulated article;

(4) Name and address of consignee of the regulated article;

(5) Identifying shipper's mark and number; and

(6) Number of the permit (if one was issued) authorizing the importation of the regulated article into the United States.

(d) *Sampling for plant pests at port of first arrival.* Any imported regulated article may be sampled for plant pests at the port of first arrival. If an inspector finds it necessary to order treatment of a regulated article at the port of first

## 7 CFR Ch. III (1-1-05 Edition)

arrival, any sampling will be done prior to treatment.

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[60 FR 27674, May 25, 1995, as amended at 66 FR 21056, Apr. 27, 2001; 69 FR 52418, Aug. 26, 2004]

### § 319.40-10 Costs and charges.

The services of an inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.<sup>6</sup> The inspector may require the importer to furnish any labor, chemicals, packing materials, or other supplies required in handling regulated articles under this subpart. APHIS will not be responsible for any costs or charges, other than those identified in this section.

[60 FR 27674, May 25, 1995, as amended at 63 FR 50111, Sept. 18, 1998; 69 FR 52418, Aug. 26, 2004; 69 FR 55733, Sept. 16, 2004]

### § 319.40-11 Plant pest risk assessment standards.

When evaluating a request to import a regulated article not allowed importation under this subpart, or a request to import a regulated article under conditions other than those prescribed by this subpart, APHIS will conduct the following analysis to determine the plant pest risks associated with each requested importation in order to determine whether or not to issue a permit under this subpart or to propose regulations establishing conditions for the importation into the United States of the regulated article.

(a) *Collecting commodity information.*

(1) APHIS will evaluate the application for information describing the regulated article and the origin, processing, treatment, and handling of the regulated article; and

(2) APHIS will evaluate history of past plant pest interceptions or introductions (including data from foreign

<sup>6</sup>Provisions relating to costs for other services of an inspector, including services related to extra inspection and separation of cargo from packing material for shipments that arrive without meeting the requirements of this subpart as required, are contained in part 354 of this chapter.

countries) associated with the regulated article.

(b) *Cataloging quarantine pests.* For the regulated article specified in an application, APHIS will determine what plant pests or potential plant pests are associated with the type of tree from which the regulated article was derived, in the country and locality from which the regulated article is to be exported. A plant pest that meets one of the following criteria is a quarantine pest and will be further evaluated in accordance with paragraph (c) of this section:

(1) Non-indigenous plant pest not present in the United States;

(2) Non-indigenous plant pest, present in the United States and capable of further dissemination in the United States;

(3) Non-indigenous plant pest that is present in the United States and has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States;

(4) Native species of the United States that has reached probable limits of its ecological range, but differs genetically from the plant pest in the United States in a way that demonstrates a potential for greater damage potential in the United States; or

(5) Non-indigenous or native plant pest that may be able to vector another plant pest that meets one of the criteria in paragraphs (b)(1) through (4) of this section.

(c) *Determining which quarantine pests to assess.* (1) APHIS will divide quarantine pests identified in paragraph (b) of this section into groups depending upon where the plant pest is most likely to be found. The plant pests would be grouped as follows:

(i) Plant pests found on the bark;

(ii) Plant pests found under the bark; and

(iii) Plant pests found in the wood.

(2) APHIS will subdivide each of the groups in paragraph (c)(1) of this section into associated taxa.

(3) APHIS will rank the plant pests in each group in paragraph (c)(2) of this section according to plant pest risk, based on the available biological infor-

mation and demonstrated plant pest importance.

(4) APHIS will identify any plant pests ranked in paragraph (c)(3) of this section for which plant pest risk assessments have previously been performed in accordance with this section. APHIS will conduct individual plant pest risk assessments for the remaining plant pests, starting with the highest ranked plant pest(s) in each group.

(5) The number of plant pests in each group to be evaluated through individual plant pest risk assessment will be based on biological similarities of members of the group as they relate to measures taken in connection with the importation of the regulated article to mitigate the plant pest risk associated with the regulated article. For example, if the plant pest risk assessment for the highest ranked plant pest indicates a need for a mitigation measure that would result in the same reduction of risk for other plant pests ranked in the group, the other members need not be subjected to individual plant pest risk assessment.

(d) *Conducting individual plant pest risk assessments.* APHIS will evaluate each of the plant pests identified in paragraph (c)(4) of this section by:

(1) Estimation of the probability of the plant pest being on, with, or in the regulated article at the time of importation;

(2) Estimation of the probability of the plant pest surviving in transit on the regulated article and entering the United States undetected;

(3) Estimation of the probability of the plant pest colonizing once it has entered into the United States;

(4) Estimation of the probability of the plant pest spreading beyond any colonized area; and

(5) Estimation of the damage to plants that could be expected upon introduction and dissemination within the United States of the plant pest.

(e) *Estimating unmitigated overall plant pest risk.* APHIS will develop an estimation of the overall plant pest risk associated with importing the regulated article based on compilation of individual plant pest risk assessments performed in accordance with paragraph (d) of this section.

(f) *Evaluating available requirements to determine whether they would allow safe importation of the regulated article.* The requirements of this subpart, and any other requirements relevant to the regulated article and plant pests involved, will be compared with the individual plant pest risk assessments in order to determine whether particular conditions on the importation of the regulated article would reduce the plant pest risk to an insignificant level. If APHIS determines that the imposition of particular conditions on the importation of the regulated article could reduce the plant pest risk to an insignificant level, and determines that sufficient APHIS resources are available to implement or ensure implementation of the conditions, APHIS will implement rulemaking to allow importation of the requested regulated article under the conditions identified by the plant pest risk assessment process.

### **Subpart—Indian Corn or Maize, Broomcorn, and Related Plants**

#### **QUARANTINE**

#### **§ 319.41 Notice of quarantine.**

(a) The fact has been determined by the Secretary of Agriculture, and notice given, that dangerous plant pests, including the so-called European corn borer (*Ostrinia nubilalis* Hubn.), and also other dangerous insects, as well as plant diseases not heretofore widely prevalent or distributed within and throughout the United States, exist, as to one or more of such pests, in Europe, Asia, Africa, Dominion of Canada, Mexico, Central and South America, and other foreign countries and localities, and may be introduced into this country through importations of the stalks or other parts of Indian corn or maize, broomcorn, and related plants.

(b) To prevent the introduction of these plant pests, the following articles may not be imported into the United States except in accordance with this subpart: The raw or unmanufactured stalk and all other parts of Indian corn or maize (*Zea mays* L.), broomcorn (*Andropogon sorghum* var. *technicus*), sweet sorghums (*Andropogon sorghum*), grain sorghums (*Andropogon sorghum*), Sudan grass (*Andropogon sorghum*

sudanensis), Johnson grass (*Andropogon halepensis*), sugarcane (*Saccharum officinarum*), including Japanese varieties, pearl millet (*Pennisetum glaucum*), napier grass (*Pennisetum purpureum*), teosinte (*Euchlaena luxurians*), and jobs-tears (*Coix lachryma-Jobi*).

(c) When the public interests will permit, the Deputy Administrator of the Plant Protection and Quarantine Programs may, upon request in specific cases, authorize such importations into Guam under conditions specified in the permit that are less stringent than those contained in this subpart.

(d) As used in this subpart, unless the context otherwise requires, the term “United States” means the States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States.

[24 FR 10788, Dec. 29, 1959, as amended at 66 FR 21056, Apr. 27, 2001]

#### **§ 319.41a Administrative instructions relating to entry into Guam of broomcorn, brooms, and similar articles.**

(a) Broomcorn for manufacturing purposes, and brooms and similar articles made of broomcorn may be imported into Guam without further permit, other than the authorization contained in this section, and without other restriction under this subpart. Notice of arrival for such importations is not necessary inasmuch as there is available to the inspector the essential information normally supplied by the importer at time of importation. Inspection of such importations may be made under the general authority of § 330.105(a) of this chapter. If an importation is found infected, infested, or contaminated with any plant pest and is not subject to disposal under this part 319, disposition may be made in accordance with § 330.106 of this chapter.

(b) Shelled corn and seeds of other plants listed in § 319.41, and mature corn on the cob, may be imported into Guam without further permit, other than the authorization contained in this section and without other restriction under this subpart, but such importations are subject to the requirements of § 319.37–4(a).